

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

---

**In re: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION**

---

)  
) **MDL No. 1456**  
) **Master File No. 01- 12257-PBS**  
) **Subcategory Case. No. 06-11337**  
)

**THIS DOCUMENT RELATES TO:**

*United States of America ex rel. Ven-A-Care of the  
Florida Keys, Inc., et al. v. Dey, Inc., et al.,*  
Civil Action No. 05-11084-PBS

---

) **Hon. Patti B. Saris**  
)  
) **Magistrate Judge**  
) **Marianne B. Bowler**  
)  
)  
)

**DEY DEFENDANTS' EXPEDITED MOTION TO COMPEL  
THE UNITED STATES TO FILE REVISED EXHIBIT AND WITNESS LISTS**

Defendants Dey, Inc., Dey Pharma, L.P. (formerly known as Dey, L.P.) and Dey L.P., Inc. (collectively, "Dey") request that the Court compel the plaintiff to comply with the Court's direction at the March 26 status conference and with Fed. R. Civ. P. 26(a)(3) by filing, on or before April 26, 2010, revised witness and exhibit lists, identifying the witnesses and exhibits it would offer in a trial against Dey. As grounds for its motion, Dey states as follows:

1. At the status conference on March 26, and in light of the government's settlement in principle with Roxane, the Court directed the parties to submit new pre-trial filings directed to each of the alternatives the Court is considering relating to the government's claim against Dey: a trial on Medicare alone, and a combined Medicare/Medicaid trial.

2. As further described in Dey's Memorandum in Support of its Expedited Motion to Compel the United States to File Revised Witness and Exhibit Lists, filed herewith, the government does not plan to file new witness and exhibit lists before the scheduled May 3, 2010 conference. The government's position is inconsistent with the Court's direction and contrary to

the requirements of Fed. R. Civ. P. 26(a)(3) because, among other reasons, the government's current lists mixes the witnesses and exhibits the government would have offered in a trial against Roxane with the witnesses and exhibits it would offer in a case against Dey, and does nothing to inform either Dey or the Court which witnesses and exhibits it would offer at the Medicare-only trial the government seeks.

WHEREFORE, Dey respectfully requests that the Court compel the government to file new exhibit and witness lists by April 26, 2010, identifying the witnesses and exhibits it would offer against Dey in a Medicare-only and in a Medicare/Medicaid trial.

Respectfully submitted,

FOLEY HOAG LLP

By: /s/Martin F. Murphy  
Martin F. Murphy, BBO #363250  
Robert E. Toone, BBO #663249  
155 Seaport Boulevard  
Boston, MA 02210  
(617) 832-1000 (telephone)  
(617) 832-7000 (facsimile)

-and-

KELLEY DRYE & WARREN LLP  
Paul F. Doyle, BBO # 133460  
Sarah L. Reid (admitted *pro hac vice*)  
William A. Escobar (admitted *pro hac vice*)  
Neil Merkl (admitted *pro hac vice*)  
Philip D. Robben (admitted *pro hac vice*)  
101 Park Avenue  
New York, NY 10178  
(212) 808-7800 (telephone)  
(212) 808-7897 (facsimile)

*Attorneys for Defendants Dey Pharma, L.P., Dey  
L.P., Inc., and Dey, Inc.*

**LOCAL RULE 7.1(A)(2) CERTIFICATE**

I certify that the parties have conferred and attempted in good faith to resolve or narrow the issue presented in this motion, but have been unable to do so.

By: /s/ Martin F. Murphy  
Martin F. Murphy

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on April 19, 2010, a copy to LexisNexis File and Serve for posting and notification to all parties.

By: /s/ Martin F. Murphy  
Martin F. Murphy